IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6943 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BILNATH EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for Petitioner

Ms. Rohini Acharya, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 22/09/2000

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner prays for issuance of a writ of mandamus or any other appropriate writ quashing and setting aside the orders passed by both the respondents, produced vide Annexures `A' & `B' alleging that they are arbitrary, malafide, illegal, unconstitutional etc., and passed in colourable exercise of powers.

2. The petitioner is a registered Trust under the Bombay Public Trust Act. It runs the Secondary School at Gandhigram in Junagadh district. It is the rural area. The school is running with the Government aid being granted from time to time. On 1st August 1995, and 8th August 1995, the Education Inspector visited the school. On 1st August 1995, the officer inspecting the school found the number of the students present in Standard VIII, IX and X against the total strength shown as follows:

Standard	Class	Students	Number of students Present
VIII	1	19	17
IX	1	56	17
X	1	38	09
	3	113	43

When he again visited on 8th August 1995, the position of the presence of the students was found as under;

Standard	Class	Students	Number of students Present
VIII	1	17	15
IX	1	56	19
X	1	37	11
	3	110	45

3. The Inspector could see that the numbers of the students present in all the three classes were less than the required number, namely 23 in each class. As

the numbers of the students present were less than the average daily attendance required as per Rule 96 of the Grant-In-Aid Code, the school was not at all entitled to have the full grant, and the same was required to be reduced. Necessary report was then made to the higher authority. The District Education Officer at Junagadh then passed the order on 9th October 1996 reducing the grant to 100% and also 25% grant by way of penalty so far as the same was relating to non-teaching staff. He has also not sanctioned grant of Jr. Clerk as well as Peon for the year 1995-96. The petitioner was also directed to make a proposal qua retrenchment of the staff members found surplus. By that order, the VIII, IX and X standards were ordered to be closed down with retrospective effect, namely June 1995. The petitioner therefore carried the matter in appeal. The Commissioner for Higher Education, Gandhinagar, who heard the appeal confirmed the order on 29th May 1987. The petitioner, feeling aggrieved by both the orders, has preferred this petition.

4. The learned advocate representing the petitioner submits in order to assail the orders passed that without application of mind and overlooking the rules, circulars and G.R. applicable the authority has arbitrarily passed the order. The inspecting authority and the authorities which passed the orders ought to have considered the fact that average presence of the students is to be considered not on the basis of position on a day or two in the same month, but found in different months during the year. If the emerging picture accordingly considering for the whole of the year is found pathetic i.e., below the standard, the authority would be right in withdrawing the grant or ordering to close down the classes with future effect, but in the case on hand the authorities considering the position of aforesaid two days of the same month in mind, becoming impatient passed the orders which are required to be struck down.

5. The learned A.G.P., Ms. Acharya submits that for the betterment of the society and providing the education to the maximum possible students in the area grants are being disbursed to the different schools, and if the schools taking everything indifferently & lightly fail to attract the students and allow the purpose of the grant being frustrated and go on using the same deviously branching off the same to different heads or spending irregularly making illusory show, or by manipulation, it amounts to waste of public money, while the honest and deserving schools have to for want of additional grant struggle like a fish out of water. In such cases

therefore if appropriate order like the present one is passed, the same may be upheld.

6. No doubt, the grant is being given to different schools so that the schools can meet with the expenditures and impart education to the students in the better way and as per required standards & norms conveniently, comfortably & efficiently and State's target can be achieved, but if the school authorities just with a view to get the grant and setting the purpose and object of the grant at naught ingeniously making out a misleading case/record go on getting the grant, it would be just and proper on the part of the authority on being satisfied that the school authorities have devicefully setting at naught the Rules, G.Rs., Grant-in-Aid Code and Rules obtained grant, or utility of the grant is frustrated, to pass adequate and harsh order in the facts & circumstances of the case so as to check misuse and satisfy the requirements of other schools. In that case, the Court will not exercise writ jurisdiction and interfere with the order passed. But if the order passed is arbitrary, or unreasonable, or based on no evidence, or based on extraneous consideration, or a result of colourable exercise of powers or bad faith, or implementation thereof is impossible or risky or against larger-good, or there is jurisdictional or procedural error, this Court can to the extent necessary interfere.

7. No doubt, in the case on hand, when on the aforesaid two days falling in the same month the Inspector visiting the school found that required average presence was lacking viz., numbers of the students' presence were found less than 23 in each of the aforesaid classes. He then without assessing the situation, blindly jumped to the conclusion that the breach of the applicable rule and Grant-in-Aid Code was committed, and the petitioner had lost the right to get the grant with past effect. The G.R. which was in force, it seems, had escaped of his mind. The G.R. No. SSN-5078-30293-G, dated 24th May 1978 was in force. As per that G.R., especially the Clause 6 thereof, the provision of the policy adopted, for the purpose of calculating the average attendance, the months of July, August and September are required to be taken into account as the average presence for the whole of the year. What was the average attendance during these 3 months, namely, July, August and September 1995 was the yardstick and not one or two days in a particular month. The Inspector who visited the school considered the average presence of the students not on the basis of attendance in July, August and September 1995 but only on the strength of the

aforesaid two days of the said month, namely August 1995. It should be noted that in that month of August, being the month of "Shravan" simultaneously, as per the Hindu Calendar there were intervening holidays owing to several religious and other festivals, and so the Government offices and schools remained closed on those festivals or ceremonies and as per the tendency of the students they did not attend school on one or two working days falling in between holidays on both the side. It is because of this peculiar reason the attendance was less in number than required. This crucial aspect has been lost the sight of or has been deliberately ignored for the purpose of passing the order. Had the authority been cautious to such facts in assessing the situation qua the average presence, it would not have passed the order in question. It was incumbent upon that authority to consider the presence of students during July, August and September 1995, but that is not done, and why it is not done is also not explained by the other side. In view of the matter, the orders passed by the authorities are certainly arbitrary and unreasonable, and cannot be maintained.

8. For the aforesaid reasons, the application is therefore allowed. Both the orders passed by the authorities are hereby quashed and set a side. Rule is accordingly made absolute.

rmr.